UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ELIZABETH ANNE DUNCOMBE, Plaintiff, vs. THE ALEXANDER DAWSON SCHOOL AT RAINBOW MOUNTAIN LLC, and THE BOARD OF TRUSTEES OF THE ALEXANDER DAWSON SCHOOL, and THE ALEXANDER DAWSON FOUNDATION, and H. MICHAEL HUGHES, HEADMASTER, and MARIO BORINI, CHAIR, BOARD OF TRUSTEES, Defendants.	2:07-CV-656-ECR-LRL **Order**

Plaintiff Elizabeth Duncombe brought suit against various members of the faculty and board of the Alexander Dawson School, the school at which Duncombe once served as the principal of the elementary school. Duncombe alleges that though her experience with the school was positive for several years, when Defendant H. Michael Hughes came on as Headmaster of the school, things took a turn for the worse. Duncombe contends that Hughes created a work environment that condoned the subjugation and objectification of women, which was intolerable.

Duncombe has raised nine causes of action against the defendants in this case: (1) gender discrimination in violation of Title VII; (2) sex discrimination in violation of Title VII; (3) retaliation under Title VII; (4) failure to prevent discrimination

under Title VII; (5) failure to investigate under Title VII; (6) termination in violation of public policy; (7) retaliation in violation of public policy; (8) hostile environment in violation of public policy; and (9) intentional infliction of emotional distress. Defendants the Alexander Dawson School, the Board of Trustees of the School, the Alexander Dawson Foundation, and Mario Borini ("the School defendants" or "the School") are named as defendants for all nine causes of action. Defendant H. Michael Hughes is now only a defendant with respect to the IIED claim,[1] and the Court has already granted summary judgment in his favor as to that claim.

Several motions are presently pending before the Court. First is the School defendants' motion (#70) for summary judgment, in which the defendants seek summary judgment as to Duncombe's first five causes of action on the basis that those claims are time-barred. In addition, the School defendants seek summary judgment as to causes of action six through eight on the basis that public policy causes of action are not viable in Nevada if there is an adequate statutory remedy. Second is the defendants' motion for summary judgment (#75), in which the defendants seek summary judgment as to Duncombe's claim for intentional infliction of emotional distress. Third is the School defendants' objection (#76-2) to an exhibit attached to Duncombe's Opposition (#71) to the motion for summary judgment (#70). Fourth is the School defendants' motion (#77) for a hearing with respect to the motion (#70) for

[1]Originally, Hughes was also named as a defendant in causes of action six through eight, but the Court granted (#51) Hughes' motion (#36) for judgment on the pleadings with respect to those claims.

summary judgment. Last is the School defendants' motion (#93) to withdraw the response that they had filed with respect to Duncombe's motion to strike, which she in turn had filed with respect to the School defendants' supplemental reply in support of their motion (#70) for summary judgment as to the Title VII claims.

The motions and the objection are ripe, and we now rule on them.

I. Background

Duncombe joined the Alexander Dawson School as the head of the lower (K through 5) school in 2000, the same year that the school opened. When the school opened, Mr. Stephen Bowers was the headmaster, and he and Duncombe got along quite well by all accounts. In 2005, Bowers left the school and the Board of Trustees hired Hughes as the next headmaster. Hughes officially took office in July 2005.

Duncombe and Hughes began having problems with each other from the start. Hughes repeatedly made comments that Duncombe found offensive. Duncome alleges that Hughes' comments made the work environment toxic and unbearable.

Hughes' comments started almost immediately. For example, in June 2005, after Hughes had been hired but before he had officially started work, Hughes told Duncombe that, while defending his doctoral dissertation, he told a dissertation committee member that he "would send her all of [his] homosexual [students]" if she would "send [him] all of her conservative Christians." Duncombe took this comment to be homophobic.

In August 2005, at a meeting with Hughes, Duncombe, and a parent of a student, the parent commented about how she had seen a news article about Hughes and that he had a nice smile in the accompanying picture. Hughes explained that he was smiling because the photographer "was wearing a low cut pair of pants where her thong was showing and moving all over the place [and] . . . she was just right there in my face making me smile."

At a staff meeting that month, Duncombe was explaining the "shelter in place" fire drills and informed Hughes that these drills were mandated by law. Hughes responded by saying that "we don't want to hear from [Duncombe] anymore." When Duncombe pressed the matter, Hughes slammed his hand down on his desk and said that "it was not the law, so [I] don't have to do that."

On August 25, 2005, at another staff meeting where the group was discussing an upcoming school barbeque, Hughes told the members of the school staff to "not wear any blouses that show any cleavage," and that they should not wear shorts if they were too old or had "cottage cheese thighs or varicose veins."

In light of these comments, in late August 2005, Duncombe complained to Human Resources about Hughes' conduct. Pam Rung, from Human Resources, recommended that Duncombe talk to Hughes' assistant about her concerns. Instead, Duncombe complained directly to Hughes. Hughes then apologized to the staff for his "cottage cheese" and "varicose veins" comments, explaining that the remarks were "meant to be lighthearted and not aimed at any specific group [of] employees."

After this apology, Kate Mulligan, the head of the middle school, and Pam Rung brought a formal complaint against Hughes to the Board of Trustee's Chair, Mario Borino. It is not clear if anything came of this complaint. Nevertheless, Hughes continued to make comments of a sexual nature.

On September 4, 2004, at a staff meeting where Duncombe was present, Hughes discussed the breasts of another female parent and commented how "her breasts were absolutely sculptured breasts with a blouse falling to the side; I couldn't stand it anymore." On September 26, 2005, Hughes told Duncombe that he would only meet with another particular parent in a public space because he thought that the parent was "coming on" to him.

On October 26, 2005, Hughes told his assistant, while not in Duncombe's presence, that he was glad she (Hughes' assistant) was in a meeting with Hughes and a parent, "because otherwise I just don't know how I would be able to describe [the parent's] nipples." Also on October 26, Hughes told Duncombe that another student's mother had "large breasts" and then indicated that the mother still nursed her son and was "trying to bring him back to infancy."

On November 18, 2005, Hughes commented to Duncombe and Kate Mulligan about yet another student's mother's breasts and jean shorts that "were so short that I think that every man's tongue was hanging out of their mouths."

On November, 22, 2005, Hughes walked up to a "group of teachers," not including Duncombe, and said that the female students at the school "dress like a group of sluts, but that is understandable because their mothers do too." The teachers, upset

by what Hughes had said, told Duncombe of Hughes' comment shortly after it happened.

At sometime in 2005, Duncombe complained to Hughes about the way in which his assistant treated the Coordinator of Admissions. Shortly thereafter, Duncombe took an extra two days in deciding whether to renew her contract with the school. In light of the delay, Hughes emailed Duncombe and told her that her delay made him "wonder about all of this." Duncombe took Hughes' email to mean that Hughes did not trust her.

In November 2005, Duncombe met with a Board of Trustees member, Charlie Sylvestri, and complained about Hughes' conduct. Silvestri indicated that parents had been complaining about Hughes and his policies. Later, Silvestri told Duncombe that there would be an investigation into Hughes' comments.

After an internal investigation, the Board of Trustees brought in a mediator in December 2005. The mediator found "no wrong doing" on anyone's part, but gave a list of suggestions, none of which mentioned the inappropriate comments that Hughes had made. After the investigation and mediation, it appears that Mario Borino continued to believe Hughes' side of the story.

Realizing that her differences with Hughes were not being resolved and thoroughly frustrated by Hughes' refusal to change his ways, Duncombe started to think of resigning. The day after the mediator visited the school, Duncombe sent an email to the mediator thanking the mediator for her work and indicating a desire to "begin[] discussions re: negotiating my departure before the end of the year [2005]."

Duncombe tried to put together a severance time line that would let her leave before the spring semester started and give her a severance package. Duncombe had hired an attorney to help draft a separation agreement. The Board, however, was not interested in losing a principal midway through an academic year and denied her request.

In early January, Duncombe started to look for alternative employment. On January 4, 2006, Hughes consented to Duncombe visiting Nevada State College about a possible position with the college.

On January 11, 2006, Duncombe went to Hughes' office to ask Hughes how they could continue to work together. Hughes responded by slamming a hand on his desk and, in a loud voice, saying, "this meeting is over!"

On January 12, 2006, Duncombe went to her doctor, presenting with shortness of breath, dizziness, a sinus infection, and shingles. Duncombe also suffered from anxiety, lack of sleep, and panic attacks. Duncombe's doctor prescribed medication to help Duncombe sleep, treat her shingles, and help her with her panic attacks. In addition, Duncombe's doctor ordered that Duncombe take 30 days off of work. Duncombe's physician gave her a note saying that "Elizabeth has developed a serious medical condition that is preventing her from performing the essential functions of her job. She is currently under my care and will not be able to return to work for one month."

Later that day, January 12, Duncombe emailed Hughes to tell him that she would be out of work for 30 days and that she would deliver

her written resignation on February 13, 2006. In addition, Duncombe wrote to the Board of Trustees and informed them that she was resigning effective February 13, 2006. (Memorandum from Duncombe to Board, Ex. I (#70-2).) She gave her official written notice of resignation to the Board on January 13, 2006. (Letter from Duncombe to Board, Ex. M (#70-2).) Also on January 13, 2006, Duncombe emailed Hughes and informed him that she had cleared all of her personal belongings out of her office and had turned in her key and parking badge. (Email from Duncombe to Hughes, Ex. K (#70-2).) On January 16, 2006, she requested that she be allowed to use the remainder of her vacation time after her medical leave, making her "effective resignation day" March 9, 2006. (Memorandum from Duncombe to Hughes, Ex. N (#70-2).)

Duncombe was able to secure other employment with Nevada State College. She was offered a temporary contract for a part-time position with the college commencing on January 23, 2006, and ending on May 20, 2006. (Ex. P (#70-2).)

On January 17, 2006, Hughes wrote a letter to the parents of the school telling them of Duncombe's resignation. (Letter from Hughes to Parents, Ex. O (#70-2).) He wrote that Duncombe left her position because, "for personal reasons, she has decided to pursue other professional opportunities. I apologize for the short notice of this announcement." Duncombe claims that this letter was intended to cause, and in fact did cause, her stress and damage by making it appear that she was "deserting" the parents and the children of the school.

On January 21, 2006, Duncombe wrote to Hughes to address his characterization of her departure to the parents of the school. (Ex. Q (#70-2).) Duncombe indicated that she found Hughes' comments about her "forced and unwanted departure" were "false and were obviously made with knowledge of their falsity."

Duncombe met with the Board to discuss her resignation and the condition of the school on February 2, 2006. (Duncombe Depo. at 639:22-640:1 (#70-2).) At this meeting, Duncombe again told the Board of Hughes' comments and behavior. (Id. at 647:14-648:7)

On February 3, 2006, Human Resources sent Duncombe her final paycheck, which represented her earnings through March 10, 2006. (Ex. R (#70-2).) Additionally, the school covered all of Duncombe's medical, dental, and vision benefits through the end of March.

It is not entirely clear when Duncombe started thinking about filing charges with the Equal Employment Opportunity Commission ("EEOC"). At one point in her deposition, Duncombe stated that she downloaded the EEOC forms and started to fill them out in January 2006, shortly after she submitted her letter of resignation. (Duncombe Depo. at 201:18-202:1 (#70-2).) At another time, she states that she was not considering taking action against the school even in February 2006. (Duncombe Depo. at 649:18-25 (#72).)

Regardless, Duncombe filled out her intake questionnaire with the EEOC on November 28, 2006. (Duncombe Declaration at 2 (#73).) She filed formal charges with the EEOC and the Nevada Equal Rights Commission ("NERC") on December 15, 2006. (Ex. S (#70-2).) In her filings, she indicated that she was "discharged," without reason, from her job on March 10, 2006. (Id.)

Duncombe attributes the delay between her discharge and her NERC filing to her adult son's death. (Duncombe Depo. at 202:2-4 (#70-2).) Her son was in a car accident on April 9, 2006, and remained in a coma for eleven weeks before passing away. (Duncombe Declaration at 2 (#73).) Duncombe states that she "could not find the strength to revisit" her Dawson experience until November 2006. (Id.)

Duncombe received her right to sue letter from the EEOC, and she filed suit (#1) in this case on May 21, 2007. On February 19, 2008, the Court dismissed (#51) Duncombe's state law causes of action against Hughes. In addition, the Court ruled that Duncombe could not state claims under Title VII against Hughes, as Title VII applies to employers, not to supervisors. On March 4, 2009, the Court granted (#83) summary judgment in favor of Hughes with respect to Duncombe's claim of intentional infliction of emotional distress. Thus, there are no extant causes of action against Hughes at this point in time.

On January 23, 2009, the School defendants filed a Motion to Dismiss or in the Alternative for Partial Summary Judgment (#70), seeking to dismiss Duncombe's Title VII claims on the basis that they were time-barred and Duncombe's state claims on the basis that they were untenable. Duncombe filed an Opposition (#71) to the motion on February 10, 2009, and the defendants filed a Reply (#76) on February 24, 2009. Attached to Duncombe's response was an exhibit purporting to show that she had her initial intake interview with the EEOC on November 28, 2006. The School defendants filed an objection (#76-2) to consideration of this evidence, arguing that

Duncombe had not disclosed it in her initial Rule 26 disclosures. Duncombe did not respond to the objection.

On February 12, 2009, the School defendants filed a Motion for Summary Judgment (#75) with respect to Duncombe's IIED cause of action. Duncombe opposed (#78) the motion on March 2, 2009. Also on March 2, 2009, the Court held a hearing with respect to Defendant Hughes' Motion for Summary Judgment (#58). On March 3, 2009, the Court granted Hughes' motion (#58), concluding no facts demonstrated that Hughes intended to cause Duncombe emotional distress with his comments. On March 23, 2009, the School defendants filed their Reply (#87), arguing in part that because the Court had granted summary judgment in Hughes' favor, the School could not be liable for an IIED claim.

II. Summary Judgment Standard

Summary judgment allows courts to avoid unnecessary trials where no material factual dispute exists. N.W. Motorcycle Ass'n v. U.S. Dep't of Agric., 18 F.3d 1468, 1471 (9th Cir. 1994). The court must view the evidence and the inferences arising therefrom in the light most favorable to the nonmoving party, Bagdadi v. Nazar, 84 F.3d 1194, 1197 (9th Cir. 1996), and should award summary judgment where no genuine issues of material fact remain in dispute and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). Judgment as a matter of law is appropriate where there is no legally sufficient evidentiary basis for a reasonable jury to find for the nonmoving party. FED. R. CIV. P. 50(a). Where reasonable minds could differ on the material facts at issue,

however, summary judgment should not be granted. Warren v. City of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995), cert. denied, 116 S.Ct. 1261 (1996).

The moving party bears the burden of informing the court of the basis for its motion, together with evidence demonstrating the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has met its burden, the party opposing the motion may not rest upon mere allegations or denials in the pleadings, but must set forth specific facts showing that there exists a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Although the parties may submit evidence in an inadmissible form - namely, depositions, admissions, interrogatory answers, and affidavits - only evidence which might be admissible at trial may be considered by a trial court in ruling on a motion for summary judgment. FED. R. CIV. P. 56(c); Beyene v. Coleman Security Services, Inc., 854 F.2d 1179, 1181 (9th Cir. 1988).

In deciding whether to grant summary judgment, a court must take three necessary steps: (1) it must determine whether a fact is material; (2) it must determine whether there exists a genuine issue for the trier of fact, as determined by the documents submitted to the court; and (3) it must consider that evidence in light of the appropriate standard of proof. Anderson, 477 U.S. at 248. Summary judgment is not proper if material factual issues exist for trial. B.C. v. Plumas Unified Sch. Dist., 192 F.3d 1260, 1264 (9th Cir. 1999). "As to materiality, only disputes over facts that might affect the outcome of the suit under the governing law will properly

preclude the entry of summary judgment." Anderson, 477 U.S. at 248. Disputes over irrelevant or unnecessary facts should not be considered. Id. Where there is a complete failure of proof on an essential element of the nonmoving party's case, all other facts become immaterial, and the moving party is entitled to judgment as a matter of law. Celotex, 477 U.S. at 323. Summary judgment is not a disfavored procedural shortcut, but rather an integral part of the federal rules as a whole. Id.

III. Motion for Summary Judgment (#70) as to Non-IIED Claims

The School defendants seek summary judgment as to both Duncombe's Title VII claims and her state law claims.

A. Title VII Claims

The School's motion (#70) does not challenge the substance of Duncombe's Title VII claims; rather, the School asserts that Duncombe failed to present her claims to the EEOC in a timely manner.

Duncombe has alleged that Hughes' comments created a hostile work environment. Duncombe contends that the hostile work environment continued until the last day she was on the school's payroll, sometime in March 2006. The defendants argue that the purported hostile environment had to end no later than Duncombe's last day on campus, January 12, 2006.

Title VII makes it unlawful for an employer to discriminate against any individual with respect to his or her "terms, conditions, or privileges of employment" on account of the

employee's "race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). "The phrase 'terms, conditions, or privileges of employment' evinces a congressional intent to strike at the entire spectrum of disparate treatment of men and women in employment, which includes requiring people to work in a discriminatorily hostile or abusive environment." Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993) (some internal quotation marks omitted).

An individual who wants to challenge an employment practice under Title VII must file a charge with the EEOC within either 180 or 300 days of the alleged unlawful employment practice, depending on whether the individual's state has an agency to handle such claims. 42 U.S.C. § 2000e-5(e)(1). In Nevada, individuals alleging discrimination in the workplace generally must first present their claims to the NERC, so they must file charges with the EEOC within 300 days of the alleged unlawful employment practice. See id.

The date that starts the clock on the limitations period depends on the type of claim involved. See Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 105 (2002). With claims of discrete acts of discrimination, such as termination, failure to promote, or denial of transfer, the statutory period begins to run on the date the discrete act happens. Id. at 114. With hostile work environment claims, however, no one discrete act gives rise to the claim; rather, the claim "is composed of a series of separate acts that collectively constitute one unlawful employment practice." Id. at 117; see Porter v. Cal. Dep't of Corr., 419 F.3d 885, 894 (9th Cir. 2005) (stating that the "most egregious of the harassing

events" need not occur within the 300-day period for a hostile environment claim "to be actionable"); Draper v. Coeur Rochester, Inc., 147 F.3d 1104, 1109 (9th Cir. 1998) (stating that even a seemingly "innocuous occurrence" may contribute to a pattern of discriminatory harassment). It makes no difference if "some of the component acts of the hostile work environment fall outside the statutory time period. Provided that an act contributing to the claim occurs within the filing period, the entire time period may be considered by a court for the purposes of determining liability." Morgan, 536 U.S. at 117.

The difference in the parties' view of the timing is significant because Duncombe filed her intake questionnaire with the EEOC on November 28, 2006.[2] Three hundred days prior to that date is February 1, 2006. Thus, if we accept the defendants' argument — that the alleged hostile environment ended no later than January 12, 2006 — Duncombe misses the filing deadline by approximately twenty days.

There is a genuine issue of material fact as to when Duncombe's employment with the school ended. She resigned at sometime in January 2006, but she stayed on the payroll until March 2006. She started a new job in January 2006, but still went to meet with the Board of Trustees on February 2, 2006, presumably to see if her job

[2]In O'Loghlin v. County of Orange, the Ninth Circuit used the date that the plaintiff "signed her intake questionnaire" as the date for determining whether a filing was timely. 229 F.3d 871, 873 (9th Cir. 2000). Although O'Loghlin involved the ADA, the Ninth Circuit noted that the ADA was modeled on Title VII. Id. at 876. Therefore, we find the court's conclusion on the point to be persuasive, and we reject the defendants' argument that using this date is improper.

could be salvaged. The school continued to pay her benefits through the end of March 2006.

On the one hand, it may be that Duncombe, though not physically present on the school grounds, was still subject to a hostile work environment through the actions of Hughes and the Board. Arguably, she was still "employed" or had not yet been "constructively discharged" as of late March 2006. It may also be that the last act of discrimination occurred on February 2, 2006, when the Board informed Duncombe that they were "sticking with" Hughes — in essence choosing Hughes over Duncombe. In either case, Duncombe's filing would be timely: 300 days after February 2, 2006, is November 29, 2006, and as noted above, Duncombe completed her EEOC intake interview on November 28, 2006.

On the other hand, it may be that Duncombe was no longer subject to a hostile work environment after she left campus on January 12, 2006. In that case, her filing would be untimely: 300 days from January 12, 2006, is November 8, 2006.

Given the uncertainty surrounding the date of the last act of discrimination and Duncombe's date of discharge, granting summary judgment would be inappropriate. See Rodriguez v. Airborne Express, 265 F.3d 890, 902 (9th Cir. 2001) (holding that the "trier of fact must resolve disputed factual issues in order to determine whether" the plaintiff was misled by the administrative office as to the time limits of his discrimination claim); Draper, 147 F.3d at 1109 (holding that a temporal determination regarding a supervisor's harassment sufficed to overcome a motion for summary judgment).

B. Objection to Duncombe's EEOC Intake Questionnaire

The defendants argue that Duncombe's EEOC interview date should not be considered because she did not disclose the document in her initial Rule 26 disclosures. (D.s' Objection at 5 (#76-2).) The defendants did not make this objection as a separate motion; rather, they attached the objection to their Reply (#76). The objection (#76-2) does not appear separately on the docket, and as such, the plaintiff never responded to it. The parties, however, agreed to re-open discovery so that the defendants could obtain a full set of records from the NERC and the EEOC.

Federal Rule of Civil Procedure 26(a) requires a party to disclose "all documents . . . that the disclosing party . . . may use to support its claims or defenses." Rule 26(e) imposes a duty on a party to "supplement or correct" any disclosure made under Rule 26(a). A party who fails to abide by Rule 26(a) or 26(e) is subject to sanctions under Rule 37(c)(1). A court has the authority to prevent the violating party from using this evidence at a hearing or trial. FED. R. CIV. P. 37(c)(1). However, a court may instead "impose other appropriate sanctions." Id.

In her opposition, Duncombe states in two ways that she met with the EEOC in November 2006. First, Duncombe attached a signed declaration stating that she filled out an EEOC intake questionnaire on November 28, 2006. (Duncombe Declaration at 2 (#73).) Second, Duncombe attached the pre-complaint questionnaire to her declaration, though the questionnaire could be missing its first page. (See id. at 4.) Regardless, Duncombe had not disclosed this initial intake date to the defendants prior to her opposition.

Although Duncombe did not properly disclose her intake date to the defendants, we find it appropriate to consider her declaration and intake questionnaire. The Federal Rules are to be interpreted "to secure the just, speedy, and inexpensive determination of every action." FED. R. CIV. P. 1. The discovery necessary for the substance of the Title VII claims overlaps significantly with the discovery for the IIED claim. Thus, there does not appear to be any significant additional expense or delay in time were we to overrule the objection. It would not, however, serve justice to sustain the objection and dismiss the plaintiff's case on account of the plaintiff's oversight.

Nevertheless, we recognize that the defendants have been tactically prejudiced by Duncombe's failure. Instead of attacking the plaintiff's claims on the merits, they chose to attack on procedural grounds. Because of this, though we will overrule the School defendants' objection, the Court will permit the defendants to file a subsequent motion for summary judgment, should they so choose. See Breeland v. S. Pac. Co., 231 F.2d 576, 579 (9th Cir. 1955) (permitting subsequent motion for summary judgment that raised different issues than those presented in the first motion).

C. State Law Claims

The School defendants next argue that Duncombe's state law claims should be dismissed. We previously dismissed these causes of action against Defendant Hughes, reasoning that "such [actions] could only lie against Plaintiff's employer." (Order at 3 (#51).)

The School argues that state common law causes of action are not available when there is a specific statutory remedy available. Duncombe argues that Nevada courts do recognize the claims of termination, retaliation, and hostile environment in violation of public policy.

As we stated in our previous Order (#51), there are two types of tortious discharge under Nevada law: (1) bad faith discharge and (2) wrongful discharge in violation of public policy. (Order at 2 (#51).) Court-created remedies, however, are available only when "the statutory remedies are insufficient to redress the wrong that has occurred." Canada v. Boyd Group, Inc., 809 F. Supp. 771, 782 (D. Nev. 1992) (citing D'Angelo v. Gardner, 819 P.2d 206, 216-17 (Nev. 1991)); Shoen v. Amerco, Inc., 896 P.2d 469, 475 (Nev. 1995) (stating "a public policy tort should not be recognized in this case based on the fact that a comprehensive statutory remedy exists").

Here, with her sixth cause of action, Duncombe alleges that her discharge violated public policy because there is a "well established public policy against Termination in employment on the basis of race, age, gender, disability, and national origin." (P.'s Compl. ¶ 121 (#1).) This type of discrimination is proscribed by Title VII, which provides a comprehensive statutory framework for remedying such discrimination.

Similarly, Duncombe's seventh and eighth causes of action appear to fall within the purview of Title VII. The seventh cause of action seeks redress for being terminated for protesting unlawful discrimination. (Id. ¶¶ 132-33.) The eighth cause of action alleges that Duncombe was subjected to a hostile work environment.

(Id. ¶¶ 139-41.) Because Title VII provides a comprehensive statutory remedy for the alleged causes of action, no public policy torts should be recognized in this case.

IV. Motion For Summary Judgment (#75) as to IIED Claim

The Court previously granted summary judgment in favor of Defendant Hughes with respect to Duncombe's intentional infliction of emotional distress claim. (Minutes of Proceedings March 2, 2009 (#83).) The remaining defendants in the action now seek summary judgment on the same claim, arguing that if Hughes was not liable for the underlying intentional tort, then neither are they.

Duncombe asserts that the defendants are liable under either of two theories: (1) respondeat superior: holding the employer liable for the tort of its employee; or (2) holding the employer liable for the reckless disregard of the probability that severe emotional distress would result from the actions of one of the employer's employees.

Both of these theories are predicated on the employee being liable for the underlying tort, and thus neither theory is viable. Hughes' conduct, which could be characterized as inappropriate, was not directed at Duncombe such that he intended to cause her severe emotional distress.

V. Other Motions

The School defendants have also moved (#77) to have a hearing on the motion for summary judgment (#70). Such a hearing will not

assist the Court in making its rulings on the case and is not necessary. The Court will deny this motion (#77).

Finally, the defendants move (#93) to withdraw their response to Duncombe's motion to strike the defendants' supplemental reply with respect to the School defendants' motion for summary judgment (#70). The defendants concede that the document "is not necessary for the Court to rule" on the motion (#70). The Court will grant the motion to withdraw.

VI. Conclusion

There is a genuine issue of material fact as to when the plaintiff left her position. As such, it is inappropriate declare that the plaintiff missed her filing deadline and to grant summary judgment in the defendants' favor.

The School defendants, however, are not liable for intentional infliction of emotional distress because their employee was not liable for the underlying tort.

IT IS THEREFORE HEREBY ORDERED THAT the defendants' motion for summary judgment (#70) is **DENIED** in part and **GRANTED** in part. The motion (#70) is denied as to the Title VII claims. The motion is (#70) is granted as to the state law claims.

IT IS FURTHER ORDERED THAT the defendants' motion for summary judgment (#75) is **GRANTED.**

IT IS FURTHER ORDERED THAT the defendants' objection (#76-2) to evidence is **OVERRULED.** The defendants may, however, choose to file a subsequent motion for summary judgment as to the substance of the

plaintiff's Title VII claims. Any such motion must be filed by July 13, 2009.

IT IS FURTHER ORDERED THAT the defendants' motion (#77) for a hearing on motion (#70) is **DENIED.**

IT IS FURTHER ORDERED THAT the defendants' motion (#93) to withdraw their response to the plaintiff's motion to strike the defendants' supplemental reply with respect to the School defendants' motion for summary judgment (#70) is **GRANTED.**

DATED: May 6, 2009.

Edward C. Reed.

UNITED STATES DISTRICT JUDGE